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January 5, 1998

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BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Petition for Clarification or, in the Alternative, Reconsideration of IDB
Mobile Communications, Inc., IB Docket No. 96-111**

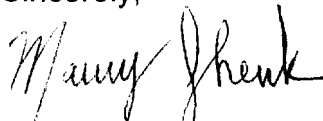
Dear Ms. Salas:

On behalf of IDB Mobile Communications, Inc. ("IDB Mobile"), enclosed for filing are an original and 11 copies of IDB Mobile's Petition for Clarification or, in the Alternative, Reconsideration in the above-referenced proceeding.

Also enclosed is an additional copy that we ask you to date stamp and return with our messenger.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Maury D. Shenk

**Counsel for IDB Mobile
Communications, Inc.**

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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JAN 5 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

**Amendment of the Commission's
Regulatory Policies to Allow Non-U.S.-
Licensed Space Stations to Provide
Domestic and International Satellite
Service in the United States**

IB Docket No. 96-111

**PETITION FOR CLARIFICATION OR,
IN THE ALTERNATIVE, RECONSIDERATION**

IDB Mobile Communications, Inc. ("IDB Mobile") submits this Petition for Clarification or, in the Alternative, Reconsideration, pursuant to 47 C.F.R. § 1.429,¹ limited to addressing the following statement in the DISCO-II Order²:

Since COMSAT is currently the sole provider of INTELSAT and Inmarsat capacity in the United States and the U.S. has no obligation to allow access under the WTO Basic Telecom Agreement, the entry standard we set out is limited to applications from COMSAT.³

¹ This rule provides that "[a]ny interested person may petition for reconsideration of a final action in a [rulemaking] proceeding" 47 C.F.R. § 1.429(a) (emphasis added).

² Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Dkt. No. 96-111, FCC 97-399 (Nov. 25, 1997) ("DISCO-II Order").

³ DISCO-II Order, ¶ 118.

This statement is based on an incorrect factual premise, because IDB Mobile holds numerous authorizations to provide Inmarsat capacity and services in the United States.⁴ Furthermore, as a matter of law, COMSAT enjoys no exclusive right to provide Inmarsat capacity or service in the United States.

The Commission should correct the above statement, and conclude that domestic service applications by competitive providers of Inmarsat capacity (like IDB Mobile) are entitled to at least as favorable consideration as applications by COMSAT. To encourage competition, the Commission should permit COMSAT's competitors, like IDB Mobile, to provide domestic Inmarsat services under similar conditions to those applicable to COMSAT.

I. IDB MOBILE HOLDS NUMEROUS AUTHORIZATIONS TO PROVIDE INMARSAT CAPACITY IN THE UNITED STATES

IDB Mobile first received FCC authorization to provide Inmarsat services in the United States in 1991. In IDB Aeronautical Communications, Inc.,⁵ the Commission authorized a predecessor of IDB Mobile to provide Inmarsat-A maritime mobile satellite services ("MMSS") and aeronautical mobile satellite services ("AMSS") in the Atlantic Ocean Region ("AOR") and Pacific Ocean Region ("POR"), using earth stations owned by an IDB Mobile affiliate.⁶ The Commission has subsequently granted

⁴ The lack of a WTO obligation to permit U.S. market access with respect to Inmarsat services does not impair the existing Commission authorizations to IDB Mobile to provide Inmarsat services or bar the Commission from issuing further such authorizations to IDB Mobile in the future.

⁵ 6 FCC Rcd 2485 (1991).

⁶ Id. at 2488.

numerous other authorizations to provide Inmarsat services to IDB Mobile.⁷ Thus, it is plain that COMSAT is not the only entity authorized to provide Inmarsat services in the United States.

The Commission's authorizations to IDB Mobile also clearly indicate that COMSAT's status as U.S. Signatory of Inmarsat⁸ does not render it the exclusive provider of Inmarsat "capacity" in the United States. IDB Mobile has numerous authorizations to provide Inmarsat service in both the ship-to-shore⁹ and shore-to-ship¹⁰ directions using foreign land earth stations ("LESSs"). The space segment capacity

⁷ See, e.g., IDB Aeronautical Communications, Inc., 6 FCC Rcd 5962 (1991) (Inmarsat-A services in Indian Ocean Region ("IOR")); IDB Aeronautical Communications, Inc., 8 FCC Rcd 807 (1993) (Inmarsat-C MMSS and AMSS in AOR, POR and IOR); IDB Aeronautical Communications, Inc., 8 FCC Rcd 930 (1993) (Inmarsat-A and -C land mobile satellite services ("LMSS") in AOR, POR and IOR); IDB Mobile Communications, Inc., 8 FCC Rcd 5616 (1993) (Inmarsat-B and -M MMSS and LMSS in AOR, POR and IOR); IDB Mobile Communications, Inc., 10 FCC Rcd 12,082 (1995) (Inmarsat AMSS in Atlantic Ocean Region-East ("AOR-E") and IOR); IDB Mobile Communications, Inc., 11 FCC Rcd 2913 (1996) (Inmarsat-A services in IOR; Inmarsat-B and -M services in AOR, POR and IOR).

⁸ See 47 U.S.C. § 752(a)(1) ("[COMSAT] is hereby designated as the sole operating entity of the United States for participation in INMARSAT").

⁹ See, e.g., IDB Aeronautical Communications, Inc., 6 FCC Rcd at 5962 (Australian LES); IDB Aeronautical Communications, Inc., 8 FCC Rcd at 807 (Australian and Netherlands LESSs); IDB Aeronautical Communications, Inc., 8 FCC Rcd at 930 (same); IDB Mobile Communications, Inc., 8 FCC Rcd at 5616 (Quebec and Hong Kong LESSs); IDB Mobile Communications, Inc., 11 FCC Rcd at 2913 (Turkish and Australian LESSs).

¹⁰ See, e.g., IDB Aeronautical Communications, Inc., 6 FCC Rcd at 5962 (Australian LES); IDB Aeronautical Communications, Inc., 8 FCC Rcd at 807 (Australian LES); IDB Aeronautical Communications, Inc., 8 FCC Rcd at 930 (same); IDB Mobile Communications, Inc., 8 FCC Rcd at 5616 (Hong Kong LES); IDB Mobile Communications, Inc., 10 FCC Rcd at 12082 (French and Australian LESSs); IDB Mobile Communications, Inc., 11 FCC Rcd at 2913 (Turkish and Australian LESSs).

provided over these earth stations is provided by Inmarsat Signatories other than COMSAT. In sum, the Commission's statement that "COMSAT is currently the sole provider of . . . Inmarsat capacity in the United States"¹¹ is simply incorrect.

II. COMSAT HAS NO EXCLUSIVE LEGAL RIGHT TO PROVIDE INMARSAT CAPACITY IN THE UNITED STATES

The rights of COMSAT with respect to Inmarsat are governed by the International Maritime Satellite Telecommunications Act (the "Maritime Satellite Act").¹² Under the Maritime Satellite Act, as noted above, COMSAT is explicitly designated as the exclusive U.S. Signatory of Inmarsat.¹³ However, the Act does not grant COMSAT any legal exclusivity with respect to the provision of Inmarsat space segment capacity.

First, nowhere in the Maritime Satellite Act is COMSAT granted exclusive authority to provide Inmarsat services or capacity in the United States. The Act merely provides that COMSAT "**may** establish, own, and operate **the United States share** of the jointly owned international space segment"¹⁴ Congress clearly knew how to grant exclusive authority to COMSAT – as it did with respect to COMSAT's Signatory

¹¹ DISCO-II Order, ¶ 118.

¹² Pub. L. 87-624, 92 Stat. 2392 (1978) (codified at 47 U.S.C. §§ 751-757).

¹³ See 47 U.S.C. § 752(a)(1), (2).

¹⁴ 47 U.S.C. § 752(b)(4) (emphasis added); see also 47 U.S.C. § 752(b)(1) (COMSAT "**may** own and operate satellite earth terminal stations in the United States") (emphasis added). The "United States share of the jointly owned international space segment" is the share attributed to COMSAT under the Inmarsat Operating Agreement, Sept. 3, 1976, 31 U.S.T. 135. Under the Operating Agreement, the size of COMSAT's share is determined based upon its usage of the Inmarsat system. *Id.*, Art. V.

status – and did not do so with respect to service authority. In fact, the above provision does not even require COMSAT to provide Inmarsat services – and it certainly does not provide COMSAT any exclusive authority to do so.

Second, the only other provision of the Maritime Satellite Act mentioning the Inmarsat space segment is the authorization to the Commission to

grant such authorizations as may be necessary under title II and title III of the Communications Act of 1934 to enable [COMSAT] –

(A) to provide to the public . . . space segment channels of communication obtained from INMARSAT; and

(B) to construct and operate such satellite earth terminal stations as may be necessary to provide sufficient access to the space segment¹⁵

Again, this authority is plainly not exclusive, as the immediately following provision of the Act authorizes the Commission to “grant such other authorizations as may be necessary under title II and title III of the Communications Act of 1934 to carry out the provisions of this title”¹⁶ As detailed in section I above, the Commission has granted numerous such authorizations to IDB Mobile.

Third, the Maritime Satellite Act makes it clear that COMSAT will not be the sole provider of access to the Inmarsat space segment by explicitly permitting the Commission to “authorize ownership of satellite earth terminal stations by persons other than [COMSAT].”¹⁷ Indeed, WorldCom, Inc. has Title III licenses for the Inmarsat earth

¹⁵ 47 U.S.C. § 753(c)(3).

¹⁶ 47 U.S.C. § 753(c)(4).

¹⁷ 47 U.S.C. § 752(e).

stations at Staten Island, New York and Niles Canyon, California owned by IDB Mobile.¹⁸ The Inmarsat services that IDB Mobile provides over these earth stations do not use any facilities owned or operated by COMSAT. For example, an Inmarsat-A call originating with a landline customer in the U.S. and terminating on a ship in the Atlantic Ocean is transmitted from (1) the customer (2) to the customer's interexchange carrier (3) to IDB Mobile's switch in New York (4) to IDB Mobile's earth station at Staten Island, New York (5) to the Inmarsat satellite (6) to the mobile terminal on the ship. COMSAT provides no communications facilities or services for such a call.

III. THE DISCO-II ORDER SHOULD EXPLICITLY PROVIDE THAT ENTITIES OTHER THAN COMSAT MAY APPLY TO PROVIDE INMARSAT SERVICES IN THE UNITED STATES

It is plain that COMSAT has no legal monopoly provision of Inmarsat services in the United States. In fact, IDB Mobile and COMSAT are presently subject to nearly identical limitations on their authority to provide domestic land mobile satellite services.¹⁹ To permit competition in provision of Inmarsat services to continue, the Commission should amend the DISCO-II Order so that it explicitly permits applications by entities other than COMSAT to provide international and domestic Inmarsat services in the United States. Furthermore, the Commission should make clear that such applications will be considered under standards no less favorable than those applicable

¹⁸ See IDB Communications Group, Inc., 10 FCC Rcd 1110 (1994) (transfer of earth station licenses to predecessor of WorldCom, Inc.).

¹⁹ Compare IDB Aeronautical Communications, Inc., 8 FCC Rcd at 931-32 with Communications Satellite Corp., 8 FCC Rcd 638, 643 (1993).

to COMSAT.²⁰ Indeed, because IDB Mobile is not a Signatory owner of Inmarsat, and has never enjoyed the statutory privileges and immunities to which COMSAT is entitled, competitive concerns regarding provision of domestic Inmarsat services by IDB Mobile should be significantly less than the corresponding concerns regarding COMSAT.²¹ In sum, the Commission's clear policy of promoting competition in the U.S. satellite services market²² indicates that the opportunities available to IDB Mobile and other competitive providers of satellite services should be no less than those available to COMSAT.

IV. CONCLUSION

For the reasons stated above, the Commission should amend the DISCO-II Order (1) to correct its statement that "COMSAT is currently the sole provider

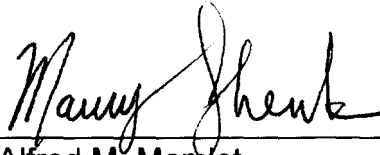
²⁰ See DISCO-II Order, ¶¶ 118-128 (setting out standards for applications to provide Inmarsat and INTELSAT service in the United States).

²¹ See id., ¶¶ 125-126.

²² See id., ¶ 10.

of . . . Inmarsat capacity in the United States" and (2) explicitly to permit entities other than COMSAT to apply for authority to provide domestic Inmarsat services.²³

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Maury D. Shenk", written over a horizontal line.

Alfred M. Mamlet

Maury D. Shenk

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**Counsel for IDB Mobile
Communications, Inc.**

January 5, 1998

²³ IDB Mobile and related companies reserve the right to file an application to provide Inmarsat domestic services while this Petition is pending.

CERTIFICATE OF SERVICE

I, Maury D. Shenk, hereby certify that the foregoing Petition for Clarification or, in the Alternative, Recnsideration was served, via first class mail, postage prepaid, this 5th day of January 1998, on the following persons:

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International Bureau
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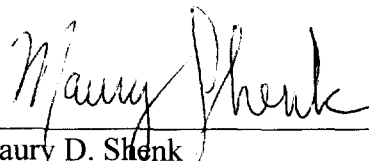
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